IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 9690 of 2004(S)

PETITIONER:

K.N.SOMASEKHARAN NAIR, S/O.KRISHNAN NAIR
AGED 50 YEARS, RESIDING AT SOORYA SOMA,
DEVIKULAM P.O. MUNNAR.

BY ADV. SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SMT.VINEETHA B.
SMT.ANSU COTTAGIRI VARGHESE
SRI.M.BENNY JOSEPH

RESPONDENTS:
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1. THE SUB DIVISIONAL ENGINEER,TELECOME,
BSNL, MUNNAR.

2. DIVISIONAL ENGINEER,TELECOMMUNICATION,
THODUPUZHA.

3. BHARATH SANCHAR NIGAL LTD., REP. BY
CHIEF GENERAL MANAGER, TELECOME, KERALA CIRCLE,
THIRUVANANTHAPURAM.

4. UNION OF INDIA, REP. BY THE SECRETARY,
M/O.COMMUNICATIONS, NEW DELHI.

BY ADV. SRI.B.JAYASANKER, SC, BSNL
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON 16/10/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

Ext.P1: Copy of the original application No.792/2002 filed by the applicant.

Ext.P2: Copy of the order No.OA.695/02/XI/KNS/02-03/6 dtd.29/10/2002 issued by the 1st respondent.

Ext.P3: Copy of the Inquiry Report dtd.1.2.1992.

Ext.P4: Copy of the order No.X/KNS/92-95/79 dtd.1.1.1999 issued by the 1st responddent.

Ext.P5: Copy of the order No.X/KNS/2001-02 dtd.11.2.2002.

Ext.P6: Copy of the final order dtd.21/3/2002 in Criminal MC.No.2642/2002 issued by the Hon'ble High Court of Kerala.

Ext.P7: Copy of the reply statement filed by the respondents in OA.No.792/02.

Ext.P8: Copy of the order dtd.7/8/03 in OA.No.792/02 of Central Administrative Tribunal, Ernakulam.

Ext.P9: Copy of the RA.17/2002 filed by the petitioner (without Annexure).

Ext.P10: Copy of the order dtd.7/11/2003 in RA.17/03 of the Central Administrative Tribunal, Ernakulam Bench.

RESPONDENTS' EXHIBITS:-

Ext.R1(a): Copy of the joining report dtd.30/10/2003 under Sub Divisional Engineer, Telecom, Munnar.

(true copy)

P.S. TO JUDGE.

Kvs/-

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.9690 of 2004-S

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Dated this the 16th day of October, 2007

JUDGMENT

Balakrishnan Nair J.

The petitioner was the applicant in O.A. No.792/2002 which was disposed of by the Central Administrative Tribunal, Ernakulam Bench by Ext.P8 judgment. The Tribunal, by the said order, set aside his dismissal from service, but declined to grant back wages. The petitioner attempted a review petition against Ext.P8, before the Tribunal. That was dismissed by Ext.P10 order. So, this writ petition is filed challenging Ext.P8 to the extent it is objected to and also Ext.P10.

2. The brief facts necessary for the disposal of this writ petition are the following: The petitioner joined the Telecom Department as Lineman in 1978. He was served with a charge-sheet in 1987 alleging that the certified extract of the school admission register produced by him is a forged document. In the disciplinary proceedings the enquiry officer submitted Ext.P3 enquiry report dated 1.2.1992 finding him guilty of the charges. On receipt of Ext.P3, the disciplinary authority thought that it is a matter requiring criminal prosecution against the petitioner. So, an information

was lodged before the police which registered a crime under Sections 471, 447-A, 465 and 420 I.P.C. against the petitioner. The trial court convicted him and sentenced him for the above offences, by judgment dated 23.1.1998. In the light of the conviction, action was taken against him under Rule 19 of the C.C.S. (Classification,Control and Appeal) Rules and he was dismissed from service on 1.1.1999. Later, the Sessions Court allowed the appeal filed by the petitioner by judgment dated 25.5.2001. The petitioner moved for review of his dismissal from service under Rule 19, in view of his acquittal. The Tribunal directed the consideration of his request. His representation for reinstatement was rejected by the competent authority by Ext.P5 order dated 11.2.2002. In the meantime, an adverse observation in the judgment of the Sessions Court was expunged by this court by Ext.P6 order in Crl.M.C. No.2642/2002. The petitioner again sought reconsideration of his punishment. The Tribunal by judgment dated 31.10.2002 in O.A. No.695/2002, directed reconsideration of the claim of the petitioner in the light of the order in the Crl.M.C. In the meantime, by Ext.P2 order dated 29.10.2002, the petitioner was dismissed from service with effect from 1.1.1999, purportedly based on the findings in the domestic enquiry. The said order was challenged by filing O.A. No.792/2002. In the O.A., Ext.P2 dismissal order was set aside and he was ordered to be

reinstated in service without back wages. It was also ordered that the period he was out of service, can be counted only for the purpose of pensionary benefits. As mentioned earlier, to the extent Ext.P8 order is adverse to him, is under challenge in this writ petition. The order in review, Ext.P10 is also challenged.

3. Learned counsel for the petitioner submitted that normally if a dismissal is set aside, all the consequences like payment of back wages and other service benefits should also be granted. In this case, there are no special grounds to deny those benefits. The Tribunal mainly relied on the oral submission made by the learned counsel for the respondents at the time of argument that the petitioner was gainfully employed elsewhere. The same was not a point raised in the reply statement or in the argument note submitted. The said contention was factually incorrect also. Therefore, the reliance placed by the Tribunal on the said submission made by the learned counsel for the respondents to deny back wages, is unsustainable. The said point was again wrongly decided in the review petition. Therefore, the petitioner prays for all the reliefs sought in the writ petition.

4. The respondents have filed a counter affidavit resisting the prayers in the writ petition. According to them, only on technical grounds, the petitioner was acquitted. His order of dismissal was also set aside only on

technical grounds and therefore, the Tribunal rightly exercised the discretion not to grant back wages for the period he has not worked.

5. The subject matter of the decision impugned, is a matter within the discretion of the Tribunal. Normally, when a decision is rendered by the Tribunal in its discretion, this court will not interfere with the same unless the same is shown to be perverse or is one which no man in his senses, will take or the same has occasioned a manifest failure of justice. The difference of opinion with the view taken by the Tribunal, is not a ground to interfere with the same. It is a well settled principle in law that two persons can come to opposite conclusions on the same set of facts without forfeiting of their title to be held as reasonable persons. But in this case, we find an illegality in the second order in so far as it dismisses the petitioner with retrospective effect. The second dismissal order can be passed only after setting aside the first dismissal order. So, the second dismissal order can be taken to be an order passed setting aside the earlier dismissal order and passing a fresh order. If that be so, the petitioner should at least be treated as suspended from the date of effect of the first dismissal order till the date of the second dismissal order. So, he is entitled to get subsistence allowance for the said period. Therefore, we are inclined to correct the said infirmity in the order of the Tribunal. The period from 1.1.1999 to 29.10.2002 should

be treated as under suspension. How the period of suspension from 27.2.1998 and the period of deemed suspension from 1.1.1999 to 29.10.2002 should be treated for service benefits, shall be considered by the competent authority under the relevant provisions of the Fundamental Rules, after affording an opportunity of being heard to the petitioner, within three months from the date of receipt of a copy of this judgment. Needless to say, the competent authority need not feel fettered by the observations of the Tribunal in this regard in Ext.P8 or Ext.P10. The subsistence allowance which the petitioner is eligible as per this judgment, shall also be released to him within three months from the date of production of a copy of this judgment.

The writ petition is disposed of as above.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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